No. 08A1096

IN THE

Supreme Court of the United States

INDIANA STATE POLICE PENSION TRUST, ET AL.,
Applicants,

v.

CHRYSLER LLC, *ET AL.*,
Respondents.

RESPONSE TO APPLICANTS' SUPPLEMENTAL STATEMENT

To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States and Circuit Justice of the United States Court of Appeals for the Second Circuit:

Respondent Fiat S.p.A. respectfully submits this response to the "supplemental statement" submitted by the Indiana Pensioners in support of their emergency stay application. The Indiana Pensioners quote a comment attributed to Fiat's chief executive officer, Sergio Marchionne, in the news media yesterday to the effect that Fiat will "never walk away" from Chrysler. From that comment, the Indiana Pensioners ask this Court to conclude that the "risk of termination by Fiat if the transaction does not close by June 15 no longer provides a basis for driving the timing of these proceedings." That conclusion is unwarranted.

The crucial point that the Indiana Pensioners ignore is that if the sale transaction approved by the bankruptcy court does not close by June 15, 2009, it

will terminate under its express terms. Section 10.01 of the Master Transaction Agreement provides that it will terminate *automatically* "if the Closing Date shall not have occurred on or before June 15, 2009." The sole exception — that Fiat or Chrysler can elect to extend the Closing Date for 30 days if certain regulatory approvals have not yet been obtained — is inapplicable because those approvals are already in hand. The automatic termination reflects the delicate balance of the interests of numerous stakeholders in Chrysler's rescue and the recognition that after June 15, 2009 the likely deterioration in Chrysler's fortunes would mean that none of those stakeholders would be willing to continue to be bound by the original bargain.

If the sale transaction is not completed soon, there can be no assurance that a replacement transaction could be structured and agreed that would preserve any aspect of Chrysler as a going concern. As Alfredo Altavilla of Fiat testified at the sale hearing, without the interim debtor-in-possession financing being provided to Chrysler by the U.S. Treasury and Canada, "Chrysler cannot stay alive," a fact that the Indiana Pensioners have never disputed. The U.S. Treasury has no obligation to continue providing such debtor-in-possession financing after June 30, 2009. Moreover, once the Master Transaction Agreement terminates on June 15, 2009, it may simply be impossible to get the large number of stakeholders that are critical to the success of the new enterprise to agree on the terms of a replacement transaction.

Thus, whatever commitment Fiat may have to provide the industrial support and management expertise required to restore Chrysler to viability, any further delay imperils the chances of achieving an agreement that would permit Fiat to provide such support, leaving the alternative of a devastating liquidation of Chrysler. Even the publicity surrounding the current delay puts Chrysler at further risk by sowing seeds of uncertainty among the many constituencies — employees, suppliers, dealers and taxpayers — who have supported this transaction and whose continued belief in the potential renewed viability of Chrysler is crucial to its survival. Further delay would only compound this risk while serving no countervailing public interest.

Fiat's commitment to Chrysler is entirely consistent with Fiat's obligation to its own shareholders to ensure that it retains the benefit of its original bargain by requiring additional concessions from other stakeholders to compensate Fiat for the diminution in the value of Chrysler's assets and the incremental cost of further disruption in Chrysler's commercial operations that will occur if the transaction does not close by the agreed deadline. Moreover, that commitment takes away nothing from the fact that Chrysler could well be forced into liquidation if the sale transaction is not completed on or before June 15, 2009. As the bankruptcy court found, and the Indiana Pensioners do not deny, such a liquidation would inflict grievous harm on many constituencies, including thousands of people in the State of Indiana who are employed by Chrysler or one of its suppliers or dealers.

As opposed to the purely monetary interests being pursued by the Indiana Pensioners, there are literally thousands of others who will be irreparably harmed if the sale transaction is not completed and Chrysler goes into liquidation. Moreover, given the importance of Chrysler to the economy at large, the public interest weighs heavily in favor of permitting the sale transaction to be completed. The Court should reject the efforts of the Indiana Pensioners to stand in the way of that happening.

Respectfully submitted,

/ s / Steven L. Holley
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